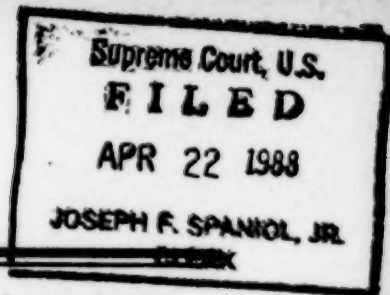


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No. 87-1616



In the Supreme Court of the United States

OCTOBER TERM, 1987

KATHERINE JEAN GRAHAM, ET AL., PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT

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QUESTIONS PRESENTED

1. Whether a payment to the Church of Scientology for auditing or training sessions is deductible from taxable income as a "contribution or gift" under Section 170 of the Internal Revenue Code.

2. Whether the First Amendment requires that such a payment be deductible from taxable income.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-18a) is reported at 822 F.2d 844. The opinion of the Tax Court (Pet. App. 36a-46a) is reported at 83 T.C. 575.

JURISDICTION

The judgment of the court of appeals (Pet. App. 19a) was entered on July 17, 1987. A petition for rehearing was denied on December 1, 1987 (Pet. App. 20a-21a). On February 19, 1988, Justice O'Connor extended the time within which to file a petition for a writ of certiorari to and including March 30, 1988, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioners each made payments to a branch of the Church of Scientology and claimed those payments as

(1)

charitable deductions on their federal income tax returns under Section 170 of the Internal Revenue Code,¹ which permits a deduction for a "contribution or gift" to certain eligible donees (see I.R.C. § 170(c)). These payments were made in exchange for "auditing" and "training" services provided by the Church. Scientologists believe that auditing helps an individual to achieve a higher level of "spiritual competence." Auditing is administered in a one-to-one session by a trained Scientologist who asks the auditee questions and measures his skin responses during the answers by means of an electronic device. "Training" courses study the doctrines of Scientology and are believed to yield further spiritual benefits. See Pet. App. 38a, 40a-41a. On audit, the Commissioner disallowed the claimed deductions. *Id.* at 2a.²

2. Petitioners filed petitions in the Tax Court for review of the Commissioner's determinations, and their cases were consolidated for trial.³ The Tax Court upheld

¹ Unless otherwise noted, all statutory references are to the Internal Revenue Code (26 U.S.C.), as amended (the Code or I.R.C.).

² Petitioner Graham took a deduction of \$1,682, and the Commissioner asserted a deficiency in the amount of \$316. Petitioner Hermann took a deduction of \$3,922, and the Commissioner asserted a deficiency of \$803. Petitioner Maynard took a deduction of \$5,000, and the Commissioner asserted a deficiency of \$643. Pet. App. 36a, 40a-41a.

³ Numerous other taxpayers who had filed petitions in the Tax Court challenging the denial of a charitable deduction for payments to the Church of Scientology agreed to forgo their own trials and to treat the instant consolidated cases as a "test case." To that end, they entered into stipulations to be bound by "any relevant findings of fact and conclusions of law" (excluding those relating to "subjective intent") to be made by the Tax Court in the instant case. The stipulations further provided that the record in the instant case, "to the extent relevant," would be deemed part of the record in their own cases for the purpose of appeal.

the Commissioner's position (Pet. App. 36a-46a), making the following findings of fact. The court found that the Church charges a "fixed donation" for training and auditing, which is almost never waived (*id.* at 39a).⁴ The Church "operates in a commercial manner" in providing these services (*id.* at 40a). It promotes its services through lectures and radio and newspaper advertising. It gives a standard discount for payments made well in advance of the services to be rendered, and it issues refunds of those payments if the services ultimately are not received. *Ibid.*

The Tax Court ruled that the payments in question were not contributions under Section 170 of the Code, but rather were non-deductible payments made to purchase services (Pet. App. 41a-43a). The court explained that the payments "were not voluntary transfers without consideration, but were made with the expectation of receiving a commensurate benefit in return" (*id.* at 43a). The court continued (*ibid.*): "[W]here contributions are made with the expectation of receiving a benefit, and such benefit is received, the transfer is not a charitable contribution, but rather a quid pro quo." The court also rejected the contention that the denial of the deduction violated the First Amendment (*id.* at 43a-46a).

3. The court of appeals affirmed (Pet. App. 1a-18a). The court held that the payments were not deductible under Section 170 because they were not donations, but were payments made in exchange for a specific quid pro quo (Pet. App. 7a-11a). The court found that the alleged donations were not "intended to benefit the charity

⁴ Indeed, the Church's official policy letter states that "[p]rice cuts are forbidden under any guise" and "PROCESSING MAY NEVER BE GIVEN AWAY BY AN ORG." (Pet. App. 39a n.6). Free services are awarded only to fully contracted staff, on the condition that the staff member fulfill the terms of his contract (*ibid.*).

without reference to a reciprocal and specific benefit to the donor" (*id.* at 9a). The court also rejected petitioners' constitutional claims (*id.* at 11a-18a).

DISCUSSION

The questions presented in this petition are identical to those presented in *Hernandez v. Commissioner*, cert. granted, No. 87-963 (Apr. 18, 1988), which is one of the cases decided by the Tax Court on the basis of a stipulation to be bound by findings of fact entered in this case (see note 3, *supra*). As we noted in our response in *Hernandez*, however, we believe that it is preferable for the Court to resolve these issues in a concrete factual context, rather than on the basis of a stipulated record whose facts do not directly pertain to the party actually before the Court. Accordingly, we believe that the instant case presents the best vehicle for resolving the issues presented here and in *Hernandez*, and we suggest that it would be appropriate for the Court to grant certiorari here and consolidate this case for briefing and argument with *Hernandez*.⁵

⁵ Counsel for the petitioners in this case is also representing the petitioner in *Hernandez*, and therefore consolidation would not require that an additional brief be filed on the petitioners' behalf. See *Hernandez Br.* in Opp. at 9.

CONCLUSION

The petition for a writ of certiorari should be granted and the case consolidated with *Hernandez v. Commissioner*, No. 87-963.

Respectfully submitted.

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